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December 2, 2003

Larry Norton, Esq.  
Office of the General Counsel  
Federal Election Commission  
999 E Street, N.W.  
Washington, DC 20463

**RE: MUR 5390 Respondent Epiphany Productions, Inc.**

Dear Mr. Norton:

On behalf of Epiphany Productions, Inc., this letter is in response to a complaint submitted by Public Citizen and Public Citizen's Congress Watch (collectively "Public Citizen"). Epiphany Productions denies that any violation of the Federal Election Campaign Act of 1971, as amended ("FECA") occurred and it requests that the Commission dismiss this complaint and close this matter as it pertains to them.

Epiphany Productions is a vendor that provided limited event fundraising consulting services that included sending fax invitations for small dinner events, making some solicitation phone calls, providing a staff person at the events, and preparing in-kind contribution notifications for the dinner host(s) which were sent to the campaign committees.

1. Epiphany Productions did not make in-kind contributions to campaigns when it provided dinner event consulting services in 2001 and 2002. Every campaign cited in the complaint was charged the usual and normal rate for the dinner-event consulting services provided by Epiphany Productions. Although a handful of campaigns have not paid, the vendor continues to make attempts to collect fees owed by them. Contrary to the assertion made in the complaint, a campaign's failure to pay a vendor's invoice in a timely manner does not result in an in-kind contribution by the vendor, provided that the vendor acted in the ordinary course of business to bill and collect for the services.

During the 2002 election cycle, Epiphany Productions provided consulting services for approximately 275 federal campaign events. Public Citizen claims that Epiphany Productions was not paid for 19 particular dinner events and, as a result, the vendor made an in-kind contribution to those campaigns. That conclusion, however, is not supported by the law on this matter.

The Commission's regulations define an in-kind contribution as "the provision of any goods or services without charge or at a charge that is less than the usual and normal charge for

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COUNSEL  
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such goods and services..." 11 C.F.R. §100.52(d)(1). Epiphany Productions sent written invoices to each campaign charging them the usual and normal rate for the services provided. Only a few campaigns still owe Epiphany Productions.

Furthermore, the Commission's regulations specify that a debt owed to a vendor only becomes a contribution "if a creditor fails to make a commercially reasonable attempt to collect the debt." 11 C.F.R. §100.55. In addition to the written invoices that were sent to each campaign committee, at least two follow-up phone calls were made and additional past-due notices will continue to be sent until the debt is paid. Pursuant to Commission regulations, Epiphany Productions has not made in-kind contributions to any campaigns.

The facts in this matter do not support the inaccurate statements made to the press and erroneous conclusions drawn from reports filed with the Commission that Public Citizen relied upon to make its accusations against Epiphany Productions.

a. Invoices were sent to each campaign mentioned in the complaint that claimed to the press it had not received an invoice from Epiphany Productions, as follows:

- (1). Rep. Katherine Harris's campaign was invoiced for a June 2002 event. Copy enclosed.
- (2). Rep. Michael Ferguson's campaign was invoiced for two events and Epiphany Productions received payment in full.
- (3). Rep. Gary Miller's campaign was invoiced for a July 2002 event. Copy enclosed.

b. In-kind contribution notifications were sent on behalf of the host(s) to each campaign that, according to the complaint, did not report the receipt of the in-kind contribution to the FEC, as follows:

- (1). Sen. Phil Gramm's campaign was sent an in-kind notification in June 2001 for a May 2001 event. Copy enclosed.
- (2). Rep. Bob Riley's campaign was sent an in-kind notification in June 2001 for a May 2001 event. Copy enclosed.
- (3). Rep. Melissa Hart's campaign was sent an in-kind notification in June 2001 for a June 2001 event. Copy enclosed.
- (4). Rep. Deborah Pryce and Rep. Pat Tiberi were sent in-kind notifications in December 2001 for a December 2001 event. Copies enclosed.

Contrary to the assertion made by Public Citizen, these documents demonstrate that Epiphany Productions did not make in-kind contributions, that it charged the campaigns for the services provided, and that in-kind notifications were sent to the recipient committees on behalf of the host(s).

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2. Epiphany Productions did not pass along corporate discounts for the benefit of federal campaigns. The fundraising consultant was not a party to the agreement between Galileo Restaurant and the host for the cost of the events in 2001 and 2002. Epiphany Productions was only responsible for sending invitations by fax, providing limited services at the events, and sending in-kind notifications following each event on behalf of the host(s). The fundraising consultant was not in the position to accept or pass along corporate discounts, if any, for the benefit of federal campaigns. We note, however, that pursuant to 11 C.F.R. §100.78, a vendor could provide a discount of up to \$1,000 per election for food or beverage on behalf of a candidate.

#### Conclusion

The facts and the law do not support Public Citizen's complaint against Epiphany Productions. Every campaign was charged the usual and normal fee for services provided by Epiphany Productions. The consultant continues to seek payment for these services from those campaigns that still owe a debt. A campaign's failure to pay a vendor's invoice in a timely manner does not result in an in-kind contribution by the vendor. Furthermore, Epiphany Productions was not in the position to accept or pass along corporate discounts, if any, for the benefit of federal campaigns.

We respectfully request that the Commission promptly close this matter as it pertains to Epiphany Productions.

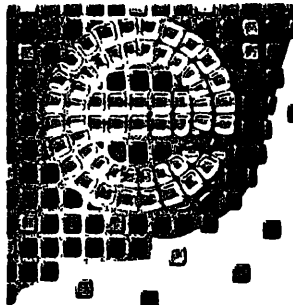
Sincerely,



Lyn Utrecht  
Counsel, Epiphany Productions, Inc.

Enclosures

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epiphany productions  
incorporated  
■ events • fundraising • development

INVOICE

<u>Date</u>	<u>Invoice #</u>
8/21/02	434

Bill to  
Friends of Katherine Harris  
P.O. Box 25187  
Sarasota, FL 34277

<u>Item</u>	<u>Description</u>	<u>Amount</u>
Event Expenses	06/04/02 fundraising event	\$618.47

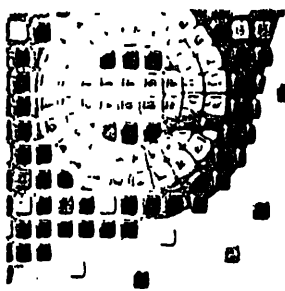
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Please remit upon receipt to epiphany productions, inc.

<b>Total</b>	<b>\$618.47</b>
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■ 104 east hume avenue  
alexandria va 22301  
703 683 7500  
703 683 4482 fax  
■ epiphanyproductions.com

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epiphany productions

■ events ■ fundraising ■ development

## INVOICE

Date

Invoice #

11/13/02

437

Bill to

Gary Miller for Congress  
721 S. Brea Canyon Rd, Suite #7  
Diamond Bar, CA 91789

Item

Description

Amount

Event Expenses

07/09/02 fundraising event

\$410.02

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Please remit upon receipt to epiphany productions, inc.

**Total**

**\$410.02**

104 east hume avenue  
alexandria va 22301

703 683 4482 fax

epiphany.com

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# MITCH DELK

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June 27, 2001

Gramm for U.S. Senate  
900 Second Street, N.E. Suite #114  
Washington, D.C. 20002


Dear Treasurer:

This letter is to serve as official record of my personal in-kind contribution to Gramm for U S Senate. The in-kind of \$750.00 was the cost of the dinner I hosted on behalf of Chairman Phil Gramm on May 8, 2001 at Galileo Restaurant in Washington, DC.

The in-kind should be designated to the Primary Election campaign 2002.

Please call Julie Conway or Julie Wadler at 703/683-7500 if you have any questions.

Sincerely,



Mitch Delk

MD jac

# MITCH DELK

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June 27, 2001

Riley for Congress  
P.O. Box 700  
Ashland, AL 36251

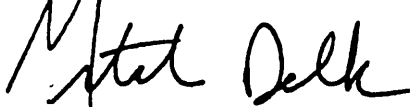
Dear Treasurer:

This letter is to serve as official record of my personal in-kind contribution to Riley for Congress. The in-kind of \$500.00 was the cost of the dinner I hosted on behalf of Representative Bob Riley on May 9, 2001 at Gaiileo Restaurant in Washington, DC.

The in-kind should be designated to the Primary Election campaign 2002.

Please call Julie Conway or Julie Wadler at 703/683-7500 if you have any questions.

Sincerely,



Mitch Delk

MD jac

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# MITCH DELK

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June 27, 2001

People with Hart  
P.O. Box 435  
Wexford, PA 15090

Dear Treasurer:

This letter is to serve as official record of my personal in-kind contribution to People with Hart. The in-kind of \$500.00 was the cost of the dinner I hosted on behalf of Representative Melissa Hart on June 7, 2001 at Galileo Restaurant in Washington, DC.

The in-kind should be designated to the Primary Election campaign 2002.

Please call Julie Conway or Julie Wadler at 703/683-7500 if you have any questions.

Sincerely,



Mitch Delk

MD: jac



# *MITCH DELK*

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December 19, 2001

Tiberi for Congress  
2021 East Dublin Granville Rd., #2000  
Columbus, OH 43229

Dear Treasurer:

This letter is to serve as official record of my personal in-kind contribution to Tiberi for Congress. The in-kind of \$350.00 was half of the cost of the dinner I hosted on behalf of Representative Patrick Tiberi and Representative Deborah Pryce on December 13, 2001 at Galileo Restaurant in Washington, DC.

The in-kind should be designated to the Primary Election campaign 2002.

Please call Julie Conway or Julie Wadler at 703/683-7500 if you have any questions.

Sincerely,

Mitch Delk

MD: jac

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# *MITCH DELK*

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December 19, 2001

The PRYCE Project  
1155 21st Street NW, Suite #300  
Washington, DC 20036

Dear Treasurer:

This letter is to serve as official record of my personal in-kind contribution to The PRYCE Project. The in-kind of \$350.00 was half of the cost of the dinner I hosted on behalf of Representative Deborah Pryce and Representative Tiberi on December 18, 2001 at Galileo Restaurant in Washington, DC.

Please call Julie Conway or Julie Wadler at 703/683-7500 if you have any questions.

Sincerely,

Mitch Delk

MD: jac